

IN RE CEDAR POT THINNING SALE ET AL.

IBLA 92-17, et al.

Decided January 9, 1992

Appeals from decisions of Area Managers, Oregon, Bureau of Land Management, denying protests of timber sales. OR-090-TS91-103, et al.

Affirmed.

1. Endangered Species Act of 1973: Generally--Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Timber Sales and Disposals

It is proper for BLM to deny a protest to a proposed timber sale when it has fully considered all of the probable site-specific and cumulative environmental impacts of the sale (including the impact on the Northern spotted owl, a Federally listed threatened species) and concluded that there will be no significant environmental impact not previously considered in an applicable environmental impact statement, and the appellant has failed to demonstrate otherwise.

2. Endangered Species Act of 1973: Generally--Endangered Species Act of 1973: Section 7: Consultation--Timber Sales and Disposals

It is proper for BLM to deny a protest to a proposed timber sale based on a contention that the sale was devised in accordance with an overall BLM strategy for the interim protection of the Northern spotted owl (a Federally listed threatened species) generally called the Jamison Strategy, if BLM has fully complied with sec. 7(a)(2) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)(2) (1988), and there is no evidence that if an alternative strategy had been adopted the effect of the sale upon the owl would be any different.

APPEARANCES: Mark M. Hubbard, Oregon Natural Resources Council, Eugene, Oregon, for Oregon Natural Resources Council; Wayne E. Elliott, Coast Range Resource Area Manager, Eugene, Oregon, William E. Hatton, Acting Tillamook Resource Area Manager, Tillamook, Oregon, and Paul Jeske, Santiam Resource Area Manager, Salem, Oregon, Bureau of Land Management, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Oregon Natural Resources Council (ONRC) has appealed from August and September 1991 decisions of the Area Managers of the Coast Range Resource Area, Eugene District, and the Tillamook and Santiam Resource Areas, Salem District, Bureau of Land Management (BLM), denying ONRC's protests of four proposed timber sales, and to proceed with those sales. 1/ These appeals have been consolidated sua sponte because of the substantial similarity of legal issues presented and consideration of the merits has been expedited because the appeals are appropriate for summary disposition.

The challenged timber sales involve removal of a total of 18,001 thousand board feet (MBF) of timber from 403 acres in 13 units and 2 rights-of-way by clearcutting (313 acres) and partial cutting (90 acres). 2/ The four sales would also involve construction and rehabilitation of 3.9 miles of access roads.

According to BLM, each of the proposed timber sales was designed in conformance with the August 1990 directives of the BLM Director reflected in the management plan entitled "Northern Spotted Owl: The Jamison Plan Detailed Management Strategy" (Jamison Strategy) and the BLM report entitled "Management Guidelines for the Conservation of the Northern Spotted Owl FY 1991 through FY 1992" (Management Guidelines). The Jamison Strategy was issued in response to the April 1990 report of the Interagency Scientific Committee, entitled "A Conservation Strategy for the Northern Spotted Owl" (ISC Report). It was designed to achieve a proper balance between timber harvesting with its benefits to the timber industry and local communities and protection of the Northern spotted owl (Strix occidentalis caurina),

an officially designated threatened species under the Endangered Species

Act of 1973 (ESA), as amended, 16 U.S.C. §§ 1531-1543 (1988). See 55 FR 26114 (June 26, 1990). In general, the Jamison Strategy was intended to provide interim protection for the spotted owl in the 1991 and 1992 fiscal year timber sales pending adoption of a long-range conservation plan. Consistent with the Jamison Strategy, none of the proposed sales is located within a habitat conservation area (HCA) designated by the ISC, a December 1987 BLM/Oregon Department of Fish and Wildlife (ODFW)-agreement spotted

1/ The timber sales now being considered are the Cedar Pot Thinning (OR-090-TS91-103) sale in the Coast Range Resource Area, Eugene District (IBLA 92-17); the Springer Mountain (OR-080-TS90-101) sale in the Tillamook Resource Area, Salem District (IBLA 92-30); and the Canyon Creek (OR-080-TS1-503) and Roger Rabbit (OR-080-TS1-504) sales in the Santiam Resource Area, Salem District (IBLA 92-45 and 92-46).

2/ All of the sales under consideration are in the Cascades and Coast Range provinces of western Oregon. The sales involve land in secs. 21 and 27, T. 17 S., R. 7 W., Willamette Meridian, Lane County, Oregon (Cedar Pot Thinning); secs. 21 and 28, T. 4 S., R. 7 W., Willamette Meridian, Yamhill County, Oregon (Springer Mountain); secs. 5 through 7, T. 9 S., R. 3 E., Willamette Meridian, Marion County, Oregon (Canyon Creek); and sec. 25, T. 10 S., R. 1 W., and sec. 31, T. 10 S., R. 1 E., Willamette Meridian, Linn County, Oregon (Roger Rabbit).

owl management area (SOMA), or the additional SOMA's identified under section 318(b)(5) of the Act of October 23, 1989, 103 Stat. 746-47, where timber harvesting and associated activity is to be precluded. 3/

BLM proposed 214 timber sales in western Oregon for fiscal year (FY) 1991. BLM concluded that three of the sales now under review (Springer Mountain, Canyon Creek, and Roger Rabbit) and 171 other sales might adversely affect the Northern spotted owl or its critical habitat. For the sales now under review BLM drew this conclusion, not because any spotted owls were known to be present in the sale areas, 4/ but because the sale areas might include "suitable" owl habitat, i.e., a "mature" stand of trees (trees over 80 years old), and/or insufficient "dispersal" owl habitat, i.e., containing trees between 40 and 80 years old where less than 50 percent of the forested landscape in the overall one-quarter township contains an average diameter at breast height of 11 inches and a minimum 40-percent canopy closure, according to the 50-11-40 standard proposed by the ISC, but not adopted as binding by the Jamison Strategy. 5/

BLM requested formal consultation with the Fish and Wildlife Service (FWS), U.S. Department of the Interior, pursuant to section 7(a)(2) of the ESA, as amended, 16 U.S.C. § 1536(a)(2) (1988), to determine whether any of the sales, either individually or in combination, would be likely to jeopardize the continued existence of the owl or result in the destruction or adverse modification of its critical habitat, and thus violate section 7(a)(2) of the ESA. See ONRC, 116 IBLA 355, 366-67 (1990). In June 1991, FWS informed BLM of its determination, based on biological opinions, that the Springer Mountain, Canyon Creek, and Roger Rabbit sales would not result in the incidental taking of a spotted owl, jeopardize the continued existence of the owl, or adversely affect the owl's critical habitat. None of the sale areas had been proposed by FWS as critical habitat on May 6, 1991 (56 FR 20816). 6/

The Cedar Pot Thinning sale involves harvesting 742 MBF of timber by partial cutting (90 acres) and clearcutting (2 acres) and the construction of 0.35 miles of road. BLM did not consult with FWS regarding the impact of this sale on the Northern spotted owl because it concluded that the sale would not adversely affect the owl or its critical habitat. BLM did so

3/ None of the sale areas contain what is known as "old-growth forest."

4/ In 1990 surveys, BLM identified an owl pair about 8 miles from the Springer Mountain sale area (April-August 1990); about 5-1/4 miles from the Canyon Creek sale area (May-July 1990); and about 2-1/2 miles from the Roger Rabbit sale area (May-July 1990).

5/ The 50-11-40 rule was proposed by the ISC to provide dispersal linkages between the HCA's for juvenile and adult owls.

6/ The May 1991 designation of proposed critical habitat was amended on Aug. 13, 1991 (56 FR 40002). None of the units in the Springer Mountain, Canyon Creek, or Roger Rabbit sales included proposed critical habitat under the amended designation.

relying on its determination that no owl pairs were in or within 1-1/2 miles of the sale area, and the sale area did not include "suitable" owl habitat because the age of the trees ranged from 50 to 60 years. BLM also relied on its determination that at least 40 percent of canopy closure would remain after timber harvesting, and would, thus, "hav[e] [an] insignificant effect on the '50-11-40' rule for dispersal habitat" (Memorandum from Coast Range Resource Area Wildlife Biologist to Coast Range Resource Area Manager, dated July 11, 1991, at 1). ^{7/}

To assess the environmental consequences of the timber sales and alternatives thereto (including no action), BLM prepared environmental assessments (EA) in January, April, June, and July 1990, as supplemented (with the exception of the Cedar Pot Thinning sale) in June and July 1991. The EA's were tiered to environmental impact statements (EIS) previously prepared for various BLM 10-year timber management plans. ^{8/} The EA's were prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1988), to determine whether any of the proposed sales would have significant site-specific environmental impacts not addressed in the EIS's.

Based on the EA's and their supplements, the BLM Area Managers issued findings of no significant impact for each of the timber sales in July and August 1990 (as supplemented in July 1991) and in July 1991. In each case, they concluded that the timber sale would not result in a significant environmental impact not previously addressed in the EIS. Finally, in decisions dated July 1991, the Area Managers adopted the proposed action (with some modification of project design features and mitigating measures), and decided to go forward with the proposed sales.

On July 16 and 17, 1991, ONRC protested the proposed timber sales, raising a number of challenges. In their August 19 and 30, and September 10, 1991, decisions the BLM Area Managers presented a detailed response to each charge levied by ONRC and denied ONRC's protests. The Area Managers then decided to implement their decisions pursuant to

^{7/} Following FWS' amendment of its proposed critical habitat designation (56 FR 40002 (Aug. 13, 1991)), BLM's wildlife biologist updated his July 1991 memorandum, noting that "one unit of the Cedar Pot Thinning sale falls within the area identified as proposed Critical Habitat" (Memorandum to Coast Range Resource Area Manager, dated Aug. 21, 1991, at 1). We have reviewed both the May and August 1991 FWS proposed critical habitat designations and conclude that no land within the Cedar Pot Thinning sale has been designated as proposed critical habitat. Therefore, we attribute no weight to this statement.

^{8/} In the case of the Cedar Pot Thinning sale, the EA was tiered to the Eugene Sustained Yield Units Ten-Year Timber Management Plan Final EIS (May 1983) and, in the case of the other sales, which are in the Salem District, the EA's were tiered to the Eastside Salem Sustained Yield Units Ten-Year Timber Management Plan Final EIS (May 1983) and the Westside Salem Sustained Yield Units Ten-Year Timber Management Plan Final EIS (December 1981).

43 CFR 5003.3(f) by proceeding with the sales. ONRC appealed from the BLM decisions.

BLM went forward with the sales. Although the record does not contain executed copies of the four timber sale contracts, we presume that they were executed shortly after BLM accepted the high bids on September 3 and 23, and October 8, 1991. ^{9/} We do not know whether any road construction or logging has commenced.

[1] ONRC's statements of reasons (SOR) for appeal are all but an exact copy of its protests. As such, they fail to identify any way that BLM erred when considering or responding to the protests. In some cases, ONRC's charges do not even relate to the timber sale being challenged ^{10/} and, in many cases, ONRC does not present or even identify any evidence which might support its charges. We can discern no error in BLM's adjudication of the protests or its decisions to proceed with the sales.

ONRC's objections fall into several categories. It raises NEPA challenges, contending that the EA's failed to establish that the sales will not cause serious and irreversible damage to the environment and that BLM is required to prepare an EIS when the sales will result in significant environmental impacts. ^{11/} BLM concluded that its EA's had fully addressed all relevant environmental impacts, that there is no significant impact not addressed in the EIS's, and that it is not required to prepare another EIS.

An EIS is required under section 102(2)(C) of NEPA for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1988). It is well established that where BLM concludes, based on an EA of a timber sale, that an EIS is not required, that decision will be affirmed if BLM has taken a hard look at the environmental consequences of proceeding with the sale and reasonably decided to go ahead based on that analysis. See ONRC, supra at 363.

^{9/} The high bidders for the four sales were SwanCo Timber, Inc. (Cedar Pot Thinning), Taylor Lumber & Treating, Inc. (Springer Mountain), and Freres Lumber Co., Inc. (Canyon Creek and Roger Rabbit).

^{10/} For example, in its challenge to the Canyon Creek and Roger Rabbit sales, ONRC contends that BLM should prepare an EIS addressing the impact of BLM's Pacific yew harvest program. There are no reports of Pacific yew trees found in either sale area and ONRC has not shown otherwise.

^{11/} ONRC also contends that the sales are illegal because BLM failed to provide copies of the EA's and associated documents, free of charge, prior to the BLM decisions. As BLM noted in its decisions, the EA's and associated documents were available for public review at the respective BLM Resource Area Offices and could be reproduced for a fee. BLM complied fully with its responsibilities under 40 CFR 1500.1(b) and 1506.6(b).

To the extent that ONRC asserts that BLM did not respond properly to its request, consistent with the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1988), the Board has no jurisdiction over such matters.

See 43 CFR 2.18.

ONRC has failed to establish any error in BLM's conclusions. It has presented absolutely no evidence that any of the sales will result in damage to the environment not discussed in the EA's or that all significant environmental impacts, whether individual or cumulative, have not been addressed in the EIS's to which the EA's were tiered. NEPA is a procedural statute, and BLM is not required under NEPA to ensure that timber sales do not result in serious and irreversible damage to the environment. To satisfy NEPA requirements, BLM need only anticipate and consider possible damage before deciding to proceed with a sale. See ONRC, supra at 361 n.6.

Before concluding our discussion of ONRC's NEPA challenges, we will briefly consider ONRC's specific charge that when preparing its EA's BLM failed to consider whether the timber sales, including the sales now under consideration, will result in the release of significant amounts of carbon dioxide into the atmosphere, contributing to "global warming." ONRC states that, according to "estimates" of the Oregon Department of Energy, "harvesting old growth releases 1,678,000 tons of carbon dioxide annually" (SOR, Cedar Pot Thinning, dated Sept. 17, 1991, at 10). We recognize that carbon dioxide will be released into the atmosphere as a result of the contemplated timber sales, but the magnitude of that release is not evident in the record. ^{12/} Nor has ONRC identified the amount which would be released by the harvesting of mature, rather than old-growth, stands of timber.

Nevertheless, BLM is required to recognize "the worldwide and long-range character of environmental problems" when considering the environmental impact of approved action (42 U.S.C. § 4332(2)(F) (1988)). Certainly the phenomenon of global warming falls into that category. See City of Los Angeles v. National Highway Traffic Safety Administration (NHTSA), 912 F.2d 478, 491-92 (D.C. Cir. 1990). BLM did not take into account the extent of the cumulative effect of past and reasonably foreseeable timber sales on the world environment as a result of the release of carbon dioxide. However, even though timber harvesting will result in the release of carbon dioxide, ONRC has presented no substantial proof that the resulting carbon dioxide released might cause or even contribute to global warming in any measurable way. At best, ONRC points to a newspaper report of an article in Science magazine regarding a study by Harmon et al., stating in significant part: "Logging the Northwest's old growth forests is contributing to a global warming trend by releasing vast amounts of carbon dioxide into the atmosphere * * *. The study suggests that about 2 percent of the total amount of carbon dioxide released into the atmosphere in the past 100 years

^{12/} How timber harvesting will cause a release of carbon dioxide is not entirely clear from ONRC's SOR's. Evidently it will emanate from the soil and, considering the fact that mature trees will not be there to "take up" the carbon dioxide in the same quantities as before harvesting, recovery of the carbon dioxide will not occur for many years. See SOR, Cedar Pot Thinning, dated Sept. 17, 1991, at 10 (quoting from Biomass Subcommittee Draft Report, Oregon Department of Energy, February 1990).

may have been caused by logging in Oregon and Washington" (SOR, Cedar Pot Thinning, dated Sept. 17, 1991, at 10).

In its August and September 1991 decisions denying ONRC's protests, BLM responded that its decision not to consider the impact of the release of carbon dioxide on the world environment was correct because there is "no agreed upon research that has determined the cumulative effects of timber harvest on releasing of CO₂ and global warming" (Decision, Cedar Pot Thinning, dated Aug. 19, 1991, at 8). BLM explained that:

The calculations of Harmon, et al., * * * indicate that [the] harvest of a million acres of old growth forest in the northwest United States would add less than one-tenth of one percent to the total carbon currently in the atmosphere. Current rates of timber sales on Federal lands in the Pacific Northwest (only a small amount of old growth remains on non-federal lands) would not result in a cumulative harvest of as much as a million acres of old growth forest in the span of a decade. Thus, the cumulative effect of all such harvest would be to add less than one-tenth of one percent to the total carbon in the atmosphere. The possible effect of this addition on global warming (itself uncertain of prediction) is too small to estimate.

Id.

Clearly, the scientific community is uncertain about the nature and extent of any contribution to global warming resulting from timber sales in the Pacific Northwest. Accepting the assertions by Harmon et al. that the carbon dioxide release resulting from timber sales over the next 10 years would be nominal and would have an indeterminable impact on the world environment, we find no error in BLM's not having formally consider the impact on the environment from the release of carbon dioxide. BLM is not required to consider speculative environmental impacts. ^{13/} See Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

^{13/} A majority of the judges in City of Los Angeles v. NHTSA, upheld NHTSA's decision not to prepare an EIS in the context of its decision to permit a 1.0 miles-per-gallon rollback in the Corporate Average Fuel Economy standard for 1989 model year cars, in the face of a vigorous challenge by the Natural Resources Defense Council (NRDC) that NHTSA's action would lead to an increased release of carbon dioxide and global warming. As explained in Judge R. B. Ginsburg's concurring opinion, the court did so in view of the fact that the rollback would result in a maximum theoretical increase in greenhouse gases (principally carbon dioxide) of 1 percent and the absence of any allegation that this would marginally contribute to global warming. See 912 F.2d at 504. Unlike NRDC, ONRC has presented virtually no evidence regarding global warming or the extent that harvesting mature stands of timber would contribute to that phenomenon. We can hardly fault BLM for not formally considering these matters in its EA's.

ONRC also contends that BLM failed to comply with the multiple-use mandates of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. §§ 1701-1784 (1988), and the Act of August 28, 1937 (O&C Act), as amended, 43 U.S.C. §§ 1181a-1181f (1988), when it decided to proceed with the sales, which encompass O&C lands. 14/ This matter was addressed in each of the BLM decisions and ONRC presents nothing that remotely demonstrates that BLM committed error. Further, in the face of virtually identical ONRC arguments the Board found that BLM's approach comports with both FLPMA and the O&C Act. See ONRC, supra at 371-72.

[2] Finally, ONRC raises a number of challenges to the Jamison Strategy. The Board has jurisdiction to review the Jamison Strategy to the extent that the timber sales constitute implementation of that strategy which might adversely affect ONRC. See Joe Trow, 119 IBLA 388, 391-92 (1991). ONRC challenges BLM's decision to adopt the Jamison Strategy rather than the ISC Report, and particularly the determination that BLM will abide by the 50-11-40 dispersal habitat standard only where possible. Relying on FWS and ODFW statements, ONRC argues that the ISC Report constitutes a "credible conservation plan supported by the best scientific * * * data available" (SOR, Cedar Pot Thinning, dated Sept. 17, 1991, at 4).

ONRC would, as a general matter, prefer adoption of the ISC Report as a long-range conservation plan. However, we are concerned only with the timber sales subject to these appeals. ONRC has presented nothing that would indicate that, for these sales, the impact on the Northern spotted owl would be any different if BLM had adopted the ISC Report rather than the Jamison Strategy. BLM concluded that the Cedar Pot Thinning sale would not affect the owl. Before deciding to proceed with the Springer Mountain, Canyon Creek and Roger Rabbit sales, BLM consulted with FWS. When FWS made its no-jeopardy determinations FWS was free from any constraints which might have been imposed by the Jamison Strategy. As BLM notes, FWS relied on the ISC Report when making its no-jeopardy determinations. There is no basis for overturning BLM's reliance on the Jamison Strategy in the context of these sales. 15/

14/ ONRC also contends that BLM failed to consider designating the sale areas part of cooperative sustained-yield units, pursuant to section 1 of the Act of Mar. 29, 1944, 16 U.S.C. § 583 (1988). Leaving aside the question of whether O&C lands (upon which timber production is the dominant use) may be included in a cooperative sustained-yield unit, putting "preservation of wildlife" on par with "provid[ing] * * * a continuous and ample supply of forest products" (see ONRC, supra at 371-72), we do not regard a cooperative sustained-yield unit determination a necessary part of deciding whether or not to proceed with the sales. Thus, BLM was not required to consider cooperative sustained-yield unit designation when deciding whether to go forward with the sales. Assuming BLM has the necessary authority it may consider designating the sale areas as part of cooperative sustained-yield units at a later date.

15/ ONRC also contends that BLM failed to comply with a Management Guidelines directive to prepare preharvest and postharvest profiles regarding

ONRC also contends that BLM violated section 7(a)(2) of the ESA when it failed to consult with FWS when adopting the Jamison Strategy. In its responses to ONRC's protests, BLM noted that it was not required to consult with FWS regarding overall strategy when it was consulting with FWS in the context of any sale that might affect the Northern spotted owl. BLM supplemented its response to this allegation in its answers to ONRC's

SOR's, noting that the court in Lane County Audubon Society v. Jamison, No. 91-6123-JO (D. Or. Sept. 26, 1991), had concluded that BLM's adoption

of the Jamison Strategy violated the ESA where BLM was required to consult with FWS. According to BLM, however, the court held that "F.Y. 1991 timber sales were not affected" because the individual sales had been "submitted for consultation [with FWS]" (Answer, Cedar Pot Thinning, dated Nov. 6, 1991, at 3). For the sales involved in this decision BLM consulted with FWS every time it determined that the sale might affect the spotted owl. We fail to discern any violation of section 7(a)(2) of the ESA in the case of the sales now under review. The Jamison Strategy is not otherwise before us. 16/

Finally, ONRC asserts that implementation of the Jamison Strategy would result in excessive timber harvesting, violating the sustained-yield requirement of section 102(a) of FLPMA, 43 U.S.C. § 1701(a) (1988), and violates the provisions of the BLM Manual, by threatening to reduce owl numbers by over 60 percent. ONRC submits no proof that either of these consequences will occur as a result of the timber sales now under review.

fn. 15 (continued)

compliance with the 50-11-40 standard. BLM adequately addressed that assertion in its decisions denying ONRC's protests, and no error has

been demonstrated. BLM was well aware of the impact of each of the sales vis-a-vis the 50-11-40 standard, and FWS applied this standard when making its no-jeopardy determinations for the three Salem District sales.

16/ ONRC also argues that BLM violated section 7(a)(4) of the ESA, as amended, 16 U.S.C. § 1536(a)(4) (1988), and 50 CFR 402.10(a) by failing

to confer with FWS regarding the impact of the Cedar Pot Thinning sale

on the marbled murrelet (Brachyramphus marmoratus), a Federally proposed threatened species (see 56 FR 28362 (June 20, 1991)), stating that the

sale is "within miles of the ocean and within the preferred nesting habitat of the [murrelet]" (SOR, Cedar Pot Thinning, dated Sept. 17, 1991, at 3). Section 7(a)(4) of the ESA and 50 CFR 402.10(a) require BLM to confer with FWS if agency action is "likely to jeopardize the continued existence of any species proposed to be listed [as threatened or endangered]" (16 U.S.C. § 1536(a)(4) (1988)). In its August 1991 decision BLM responded by noting that it was not required to confer with FWS regarding the impact of the sale on the murrelet because it had determined that the sale would not affect the murrelet or its habitat. This determination is set forth in

a July 11, 1991, memorandum of the Coast Range Resource Area Wildlife Biologist, at page 2: "No marbled murrelets are known to use [this] * * * forest stand[], nor any in the immediate vicinity of th[is sale area], nor [is this] * * * stand[] of an age or structure which is likely to be used in the near future." ONRC has demonstrated no BLM error.

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In all, each of the challenges to the Jamison Strategy was addressed in BLM's August and September 1991 BLM responses to ONRC's protests. ONRC has simply failed to establish any error in the BLM decisions denying those protests.

Once again, ONRC's broadbrush challenges have failed to identify error in BLM's denial of ONRC's protests or its decisions to proceed with the timber sales. In such circumstances, the Board may summarily affirm the BLM decisions on appeal. In re Mill Creek Salvage Sale, 121 IBLA 360 (1991). After a careful review of the SOR's and records, we conclude that BLM properly denied ONRC's protests to the proposed Cedar

Pot Thinning, Springer Mountain, Canyon Creek, and Roger Rabbit timber sales in its August and September 1991 decisions. 17/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

R. W. Mullen
Administrative Judge

17/ In each case, ONRC sought a stay of further action on the challenged timber sale pending the Department's final decision on the merits of the appeal. We are now deciding finally for the Department and need take no action on the stay requests.

ADMINISTRATIVE JUDGE ARNESS CONCURRING:

While Oregon Natural Resources Council (ONRC) alleges that implementation by these timber sales of the "Jamison plan" conflicts with provisions of applicable statutes and prior planning by the Bureau of Land Management (BLM), nowhere in the protests or statements of reasons filed by ONRC in these appeals is it explained how the alleged conflicts occurred. Even if, as ONRC seems to argue, the Jamison plan is seen as a modification of the allowable sale quantity of timber planned for cutting in fiscal 1991, it seems doubtful that this Board has authority to review the objection as made, since there has been no showing that any of these sales would not have been made had existing planning been implemented without modification. See, e.g., California Association of Four Wheel Drive Clubs, Inc., 108 IBLA 140, 141 (1989), finding that this Board does not, consistent with Departmental regulation, review planning decisions that do not implement specific actions affecting the public lands. BLM contends, concerning these sales, that what it refers to as the "Jamison strategy" is not such a decision. Since ONRC has provided no information to contradict this conclusion, analysis of the Jamison plan such as the lead opinion attempts to make becomes a matter of premature exposition. On the record before us, the Jamison strategy is not shown to be relevant to decision of these fiscal 1991 timber sale appeals. 1/

In each of these cases, ONRC filed a protest of a timber sale with BLM. Denying each protest, BLM provided a point-by-point rejection of the allegations made by each protest (the protests were nearly identical). On appeal from those decisions, ONRC has failed to directly address the decisions from which appeal was ostensibly taken, instead simply repeating, nearly verbatim, the protests previously made, as though there had been no intervening decision. No attempt was made to deal with the reasons given by BLM for denying each protest except to repeat the general allegations previously made by way of protest. Where a statement of reasons in support of appeal simply reiterates arguments from a prior timber sale protest without pointing to error in the decision from which appeal has been taken, the decision may be affirmed in summary fashion. In re Mill Creek Salvage Timber Sale, 121 IBLA 360 (1991). 2/

1/ Compare this conclusion with the order attached to a judgment enjoining implementation of the Jamison strategy in Lane County Audubon Society v. Jamison, No. 91-6123-JO (D. Or. Sept. 26, 1991), that found the Jamison strategy to be "action that 'may affect' the spotted owl." Id. at 4. After making this finding, the court concluded that "the FY 1991 timber sales can go forward under the [timber management plans] and [records of decision]." Id. at 5. Because the Lane County court simultaneously enjoined use of the Jamison strategy until it was submitted for consultation with the U.S. Fish and Wildlife Service, one might infer that the prohibited activity was not considered to be directly or necessarily related to the 1991 timber sales there at issue.

2/ This procedurally defective approach to the Departmental appeals process has also been found to accompany a substantive lack of merit by the general arguments urged by ONRC in these timber sale appeals. In re Bar First Go Round Salvage Sale, 121 IBLA 347 (1991).

Accordingly, I agree with the conclusion stated by the lead opinion that the decisions from which these appeals are taken should be affirmed in summary fashion.

Franklin D. Arness
Administrative Judge